

USDC SDNY
DOCUMENT
ELECTRONICALLY FILEDDOC# 42 U.S.C. §1983
DATE FILED: 11/12/13 ✓UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Tony Shaw,

Plaintiff,

-vs-

AMENDED COMPLAINT

Civil Action No. 1:13-
06885-(LAP)
Docket For Case

#1. Dora Schiriro (Commissioner of NYC DOC); #2. Maggie Peck (Director of constituent Svcs. NYC DOC); #3. Captain Blassingame (Rikers Island-GRVC); #4. C.O. Carentz (Rikers Island-GRVC); #5. C.O. Clark (Rikers Island-GRVC); #6. Rosa Lugo (Record Access Officer); #7. NYC DOCS (Dept. of Health Affairs Unit); #8. NYC Dept. of Health and Mental Hygiene; #9. David Barbaro (Investigator)

Defendant(s)

I. STATEMENT OF JURISDICTION

1.) This is a civil action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant 42 U.S.C. §1983. The Court has Jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

II. PARTIES TO THIS ACTION

2.) Plaintiff: Tony Shaw, DIn# 12A2399
 Address : Groveland Corr. Facility
po box 50
Sonyea, NY 14556-0050

3.) Defendant #1: Dora Schiriro
Commissioner of NYC DOC
 Address #1: New York City, Dept. of Corrections
75-20 Astoria Blvd.
Jackson Heights, NY 11370

4.) Defendant #2: Maggie Peck
Director of Constituent Svcs.
 Address #2: New York City, Dept. of Corrections
75-21 Astoria Blvd.
Jackson Heights, NY 11370

5.) Defendant #3: Captain Blassingame
Captain at Rikers Island/Grievances
 Address #3: New York City, Dept. of Corrections
09-09 Hazen Street (G.R.V.C.) Fac.
East Elmhurst, NY 11370

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6.) Defendant #4: C.O. Carentz
 Address #4: Rikers Island C.O./Grievance/Clinic
 New York City, Dept. of Corrections
 09-09 Hazen Street (GRVC) Facility
 East Elmhurst, NY 11370

7.) Defendant #5: C.O. Clark
 Address #5: Rikers Island C.O./Grievance/Clinic
 New York City, Dept. of Corrections
 09-09 Hazen Street (GRVC) Facility
 East Elmhurst, NY 11370

8.) Defendant #6: Rosa Lugo
 Address #6: Record Access Officer
 New York City, Dept. of Corrections
 72-20 Astoria Heights, NY 11370
 Jackson Heights, NY 11370

9.) Defendant #7: NYS DOCS, Dept. of Health Affairs Unit
 Address #7: New York City, Dpt. of Corrections
 75-20 Astoria Blvd.
 Jackson Heights, NY 11370

10.) Defendant #8: NYC Dept. of Health and Mental Hygiene
 Address #8:

11.) Defendant #9: David Barbaro
 Investigator
 Address #9: NYC, Office of the Comptroller
 1 Centre Street,
 New York, NY 10007-2341

12.) Defendants are sued in Individual and Official Capacity

III. PREVIOUS LAWSUITS

13.) Plaintiff began a 42 U.S.C. §1983, filed on 7-17-13, dealing with the same facts as herein stated: Civil Docket Case No. 1:13-cv-06885-LAP; Complaint was dismissed without prejudice, by Judge L.A. Preska, on October 15, 2013, due to the fact that I had filed the Complaint with Two (2) un-related Claims. Judge Preska, then gave to me an additional Docket No. herein (13-cv-6885) LAP for this second Claim, which I will like to file Separately.

14.) Plaintiff has begun NO other lawsuits, that relate to his present imprisonment.

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VI. LEGAL CLAIMS

15.) Plaintiff realleges and incorporate by reference paragraphs; Hill v. Dekalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994). Also, under Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 20060). And Smith v. carpenter, 316 F.3d 178 (2d Cir.2003).

16.) Systemic Deficiencies, due to American Jurisprudence, Second Edition penal and Correctional institution VI. Liability to Inmates § 203. Failure to provide medical care; exposure to disease. violated Plaintiff Tony Shaw's Rights and Constituted Cruel and Unusual Punishment. Denial of Medical Treatment an EIGHTH & FOURTEENTH AMENDMENT. As well as Plaintiff Rights of Equal Protection. Violation when plaintiff had conteracted a High Count level 1.25 of H.Pylori, from ingesting Contaminted water in (G.R.V.C.) Rikers Island on Dec. 12/05/2012. Annex Part of the Facility 15-B Upper Cell 38. Complaint was reported to DOCS/Medical Staff and abroad

17.) The Plaintiff has noplain, adequate, or complete remedyat law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless the Court grants relief which Plaintiff seeks to Compensate and punish defendants for the violation of Plaintiffs Constitutional Rights.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court enter Judgement granting plaintiff:

18.) A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.

19.) Compensatory Damages in the amount of \$ 5,000,000 against each defendant, jointly and severally.

20.) Punitive Damages in the amount of \$ 5,000,000 against each defendant. Specifically against Defendant #1 in her direct violation of plaintiffs Constitutional Rights; is responsible for overseeing the (defendants) as the Commissioner of NYC (DOCS). And against Defendant #2 who acted in concert with Defendant's. Magie peck, Director of Constituent Services NYC (DOCS). Whereas, the plaintiff never received a reply from M. Peck, and or Commissioner except on 1/30/2012. Stating "Please be advised that the issues described in your letter have been forwarded to the Department's Health Affairs Unmit for direct action and response." However, the plaintiff has NOT yet received an answer to this date from such Unit. Captain Blassingame, Rikers island-(GRVC) and other C.O. Defendants C.O. Carentz, CO. Clark, CO. Thomas, from GRVC Facility Clinic All Failed to act accordingly for Medical Treatment. (Acted Under The Color of Law). Numbered as Defendant #3. Rosa Lugo, Record Access-Officer. Defendant #4. Also, acted in concert with Defendant's.

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- 21.) A Jury Trial on all Issues Triable by a Jury.
- 22.) Plaintiff's Costs in this Suit, including Filing Fee.
- 23.) Any additional Relief this Court may Deem Just, Proper, and equitable.

DATED: NOVEMBER 6th, 2013

Respectfully Submitted, TONY SHAW

Tony Shaw, Plaintiff
Groveland Corr. Fac.
P.O. Box 50
Sonyea, NY 14556-50

VERIFICATION

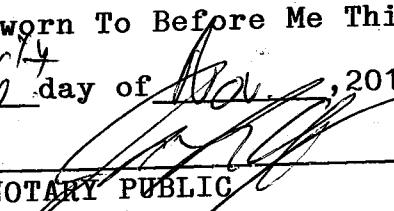
STATE OF NEW YORK)
COUNTY OF LIVINGSTON) ss.:

I, TONY SHAW, Plaintiff herein, and I have read the foregoing Complain and hereby Verify that the matters alleged therein are true, except as to those matters alleged on information and belief, and, as to those matters, I believe them to be true. I Certify under Penalty of Perjury that the foregoing is Correct and True.


Tony Shaw, Plaintiff, pro se
Groveland Corr., Facility
P.O. Box 50, Sonyea, NY 14556-50

Groveland Corr. Facility
Sworn To Before Me This

6 day of Nov., 2013


NOTARY PUBLIC

JAMES L. AUSTIN JR.
NOTARY PUBLIC STATE OF NEW YORK
#01AU6137639
MY COMMISSION EXPIRES 12/5/13
CATTARAUGUS CO.

UNITED STATES DISTRICT COURT
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IV. STATEMENT OF CLAIM

- 1.) Denying of Medical Treatment and Care, Eighth Amendment
- 2.) Equal Protection of Laws, Eighth Amendment
- 3.) Contributory Negligence/Improper Medical Care. Cruel and Unusual Punishment, Eighth Amendment

V. FACTS

1.) Place Where Complaint Accrued: George R. Vierno Center
09-09 Hazen Street, East Elmhurst, New York 11370 (G.R.V.C.) Rikers-
Island

2.) Date Complaint Accrued: December 5th, 2011

3.) Description of Incident leading to Complaint: On the above date, and at above place, Plaintiff was residing at GRVC Fac. from April 23, 2011. Without Severe Medical Internal nor External Physical Illness for HELICOBACTER ANTIBODY (G,A,M) H.Pylori Ab., IgA High Count Level 1.25 on said date. Plaintiff was Housed in the Annex of GRVC Facility. 15-B-Block, 38-upper/cell, having much of a problem and serious issue with throat pain and swallowing own saliva while constantly dehydrated ingesting Cloudy to Foggy, unclear water in cell on November 26/27/2011. Plaintiff resided in Annex 15-B-38-Upper/cell, for over 90 days and suddenly became very, extremely ill. Whereas, plaintiff reported this sickness to Housing Unit Officer's and the Sick-Call, Medical Staff at GRVC Clinic. The Plaintiff, further alledges that No immediate Actions to assist plaintiff until I went to take Blood Lab Test, which came back from plaintriffs Final-Result "Positive" for H.PYLORI 1.25 The Plaintiff was issued Antibiotics for about three (3) weeks for his Condition. Also, plaintiff have written to Dora Schriro, Commissioner of NYC (DOCS) About his Complaint. See Attached copy letter Dated January 17, 2012. The plaintiff had also informed of his Medical Illness, plaintiff's Attorney as well as The Legal Aid Society. Please Also, See Atteache Copies of letters dated on 4/11/12. And 5/18/2012. The plaintiff further alleged that on 5/10/12. Plaintiff was "DENIED" Medical Treatment and Care in (GRVC) Clinic by sickcall Officials. Who are named herein as the Defendants. Because I was infected with this "Disease". The Physical Injury's are as follows: The Basics: Plaintiff have the Right to Decent to humane conditions in prison. Whereas, living Conditions were not only harsh but hazzardly harmful. Prison Officer's and medical staff "should have known" that plaintiff had a serious medical need. Farmer v. Brennan, 511 U.S. 825, 842(1995).

In addition to Physical Injury Plaintiff Suffered Emotional Trauma and I am to this date overly concerned that the "Disease" will come back and I have to deal with the whole senario all over again.

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Defendant - NYS DOCS, Dept. of Health Affairs Unit. Plaintiff never received NO information of request regarding medical illness and Complaint after letter writing to the NYC DOCS Commissioner Dora Schriro; and Maggie Peck, on January 17, 2012. The only reply plaintiff received was from Maggie Peck, Director of Constituent Services from NYC DOCS on said date.

Defendant - 8. NYC Dept. of Health and Mental Hygiene. Plaintiff was possibly referred by someone from NYC DOCS Regarding water testings on Rikers Island plaintiff forwarded second FOIL Request seeking water testing results from Riker's island from the dates of 1/1/2010 to 12/31/2012. Especially for drinking water on the Island during requested time. Testing should include, but not be limited to Field testing, lab testing, as well as any conclusions (Medical) based on these tests. These tests should include all Buildings, especially (G.R.V.C.) , and the surrounding Facilities. Plaintiff send FOIL Request to Rosa Lugo, Record access officer and her reply to plaintiff FOIL Request on 11/21/12. Stating in her letter to plaintiff. " This is an initial response to your request for records, (copy enclosed), pursuant to the New York State Freedom of Information Law. Please be advised that the Department does not generate or maintain inmate medical records." Plaintiff mailed Legal mail request letter on two separate occasions to the NYC Dept. of Health and Mental Hygiene in September and May 5th, of 2012. Whereas, plaintiff received one final request dated Jan. 24, 2013. Re: Request for water testing and other information related to H.Pylori at Rikers Island FOIL Contron No.:2013FR00103 Plaintiff had only received information on other Contaminted water All except for plaintiffs FOIL Request/case of H.Pylori, disease.

Please Note: David Barbaro, who is the "Investigator" for Office of the Comptroller. (Bureu of Law and Adjustment) has held onto plaintiffs copies and letters regarding Medical Documents for case on Personal Injury for a "Unbelievable" amount of time. Plaintiff was asked by Mr. Barbaro, his Medical Records, Date of Birth and Social Security Number on 1/8/2012. The Court may or maynot want to use as another Defendant in plaintiffs AMENDED COMPLAINT 1983. It is the plaintiff hope and prayer that herein made mention is understood clearly by the Court as all the above defendant's are acting in concert, under the color of law, which is a Indirect-Violation of Plaintiff's Constitutional Rights. Under the Eighth Amendment for plaintiff Serious Medical Need and how prison Officials showed noting more to plaintiff dire need for care, attention also, displayed negligence as well as "deliberate indifference-caused by medical injury". Estelle v. Gamble, 429 U.S. 97 (1976).

The plaintiff was steadfast and proactively reporting to and from the GRVC Facility Clinic on Riker's Island since date of Final Result on 12/05/2011. Plaintiff was transferred out of said Facility (GRVC) on 5/31/2012. Plaintiff was transferred out of said Facility (GRVC) on 5/31/2012. Riker's Island Prison officials were very liable in plaintiffs critical medical care. *McRaven v. Sanders*, 577F.3d 974 (8th Cir. 2009). Otherwise, *Johnson v. Doughty*, 433 F.3d 1001 (7th Cir. 2006).

IN THE UNITED STATES
SOUTHERN DISTRICT COURT

Tony Shaw DIN: 12A2399

Plaintiff,

SUMMONS

v.

Civil Action No. 13-cv-6885
(LAP)

Dora Schriro, et. al.,

Defendants,

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiff, whose address is presently Groveland Correctional Facility, P.O. Box 50 Sonyea, New York 14556-0050 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service, or 60 days if the U.S. Government or officer / agent thereof is a defendant. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of the Court

Date: November 6th, 2013

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GROVELAND CORRECTIONAL FACILITY

P.O. BOX 50
SONYEA, NEW YORK 14556-0050

NAME: Tony Spakabin DORM: K-1-66

ProSe Office

Clerk RM230

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United States District Court
Southern District of New York
U.S. Courthouse - 500 Pearl Street
New York, New York 10007

